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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

MANILA ELECTRIC COMPANY,
Petitioner,

versus

A. L. YATCO, COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINES,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF

JAMES M. ROSS
Attorney for Petitioner,
414 National City Bank Bldg.
Manila, Philippines

McCullough Printing Co. 63332

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A. L. YATCO, COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINES.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the United States:

Your petitioner respectfully prays for a writ of certiorari to review the judgment of the Supreme Court, Commonwealth of the Philippines, in the case of Manila Electric Company *vs.* A. L. Yatco, Collector of Internal Revenue (G. R. No. 45697).

In support of this petition, Manila Electric Company respectfully shows to this Honorable Court:

A.
SUMMARY STATEMENT OF THE MATTER INVOLVED

I.

Petitioner is a Philippine corporation duly engaged in business in the Philippines. (R-8)

II.

During the year 1935, petitioner entered into contracts of insurance on real and personal property located in the Philippines with the City of New York Insurance Company and the United States Guaranty Insurance Company, both of which were non-resident foreign corporations which were not licensed to engage in business in the Philippines and which had no agent or representative in the Philippines. (R-9) This insurance was placed by petitioner in the City of New York, United States, without the use or services of any agent or other representative of the insurance companies residing or engaged in business in the Philippines. (R-10) The insurance contracts were made, the policies issued, and premiums in the amount of Ninety-One Thousand Six Hundred Ninety-Six Pesos and No Centavos, (₱91,696.00), Philippine currency, were paid to the insurance companies in New York. (R-9, 10)

III.

Losses were to be paid in New York City. (R-19-20) The policies contained the usual clauses providing that the insured, on making claim for loss, must submit satisfactory proof of loss to the insurance company and give the insurance company the right, on the happening of any loss, if it desired, to take possession of the property. The policies also provided that if arbitrators appointed by the parties to value the prop-

erty could not agree on an umpire, one should be appointed "by a judge of a court of record in the State in which the property insured is located". (R-21 et seq.)

IV.

Respondent, Collector of Internal Revenue, acting under the provisions of Section 192 of Act No. 2427, as amended by Section 1 of Act No. 2430, and Section 2 of Act No. 2648, and Section 4 of Act No. 3575 of the Philippine Legislature, assessed and levied against plaintiff a tax of one per cent (1%) on the amount of the premiums paid by petitioner on the said insurance policies, the premiums totaling Ninety-One Thousand Six Hundred Ninety-Six Pesos and No Centavos (₱91,696.00), Philippine currency, and the tax collected by the Collector of Internal Revenue thereon totaling Nine Hundred Sixteen Pesos and Ninety-Six Centavos (₱916.96). (R-3) Section 192 as aforesaid provides:

> "SEC. 192. It shall be unlawful for any person, company or corporation in the Philippine Islands either to procure, receive, or forward applications for insurance in or to issue or to deliver or accept policies of or for any company or companies not having been legally authorized to transact business in the Philippine Islands, as provided in this chapter; and any such person, company or corporation violating the provisions of this section shall be deemed guilty of a penal offense, and, upon conviction

thereof, shall for each such offence be punished by a fine of two hundred pesos, or imprisonment for two months, or both in the discretion of the court: *Provided*, That insurance in companies not authorized to transact business in the Philippine Islands may be placed upon terms and conditions as follows:

The Insurance Commissioner may issue a certificate of authority to any regularly authorized fire, marine or miscellaneous insurance agent of the Philippine Islands, subject to revocation at any time, permitting the person named therein to procure policies of such insurance as he may have previously been regularly authorized to transact on risks located in the Philippine Islands for companies not authorized to transact business in the Philippine Islands.

Before the agent named in such certificate of authority shall procure any insurance in such company there shall be executed and filed in each case with the insurance commissioner by the agent and by the party desiring the insurance affidavits setting forth that the party desiring insurance is, after diligent effort, unable to procure, in any of the companies authorized to to do business in the Philippine Islands, the amount of insurance necessary.

Every such agent shall keep a separate account of the business done under the author-

ity of this section, open at all times to the inspection of any authorized Government officer, showing the exact amount and character of such insurance placed for any person, firm or corporation, the gross premium charged thereon, the companies with which the same is placed, the dates of the policies, the terms thereof, and the location of the insured property.

Such agent shall likewise make a yearly report to the Collector of Internal Revenue at the time and in the manner prescribed in section eighty-one of Act Numbered Twenty-three hundred and thirty-nine, showing the entire amount of all premiums received by the company he represents under the authority of this section. And such agent shall pay to the Collector of Internal Revenue a tax equal to twice the tax imposed by section Seventy-nine of Act Numbered Twenty-three hundred and thirty-nine, which tax shall be paid at the same time and be subject to the same penalty for delinquency as the tax imposed by said Act Numbered Twenty-three hundred and thirty-nine: *Provided, however*, That the provisions of this section shall not apply to reinsurance; *And provided further*, That the prohibitions of this section shall not affect the right of an owner of property to apply for and obtain for himself policies in foreign companies in cases where said owner does not make use of the services of any agent, company or

corporation residing or doing business in the Philippine Islands. In all cases where owners of property obtain insurance directly with foreign companies, it shall be the duty of said owners to report to the insurance commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and shall pay the tax of one per centum on premium paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so.

Any decision made by the Insurance Commissioner by virtue of the powers conferred upon him by this Act shall be appealable to the Secretary of Finance (and Justice) whose decision shall be final."

V.

Petitioner paid the said taxes under proper protest and in due course brought action for their recovery (R-9, 10, 1-4). The trial court granted judgment for defendant, holding that the tax was properly imposed because of the fact that the insured property was located in the Philippines. The court also referred to certain clauses in the insurance contract providing for proof of loss satisfactory to the insurance company and providing that if arbitrators selected by the parties were unable to agree on an umpire, he should be selected by the judge of a court of record of the State where

the property was situated. The court did not find that either insurance company ever entered the Philippines or sent an agent here. (Decision, R-30).

VI.

The judgment was in due course appealed to the Supreme Court, petitioner assigning the following errors (R. 47-9):

1. The lower court erred in not holding that to the extent that section 192, as amended, of Act 2427, authorized appellee to levy a tax on appellant on premiums paid by the latter to the City of New York Insurance Company and United States Guaranty Insurance Company, such provision of law deprives appellant of liberty and property without due process of law and contravenes the provisions and limitations of the Act of Congress of August 29, 1916, and of the Constitution of the Philippines.

2. The lower court erred in holding that the City of New York Insurance Company and the United States Guaranty Insurance Company were doing business in the Philippines and were within the taxing jurisdiction of the Commonwealth of the Philippines.

3. The lower court erred in holding that the Supreme Court of the United States, in the case of Compañia General de Tabacos de Filipinas *vs.* Collector of Internal Revenue, 275 U. S. 85, 72 L. Ed. 177, did not declare that insofar as Section 192, as amended,

of Act 2427, allowed a tax to be assessed and levied upon premiums paid by an owner of property located in the Philippines on insurance procured outside of the Philippines from insurance companies not doing business in the Philippines, such section was in contravention of the provisions and limitations of the Act of Congress of August 29, 1916.

4. The lower court erred in denying plaintiff's motion for a new trial.

VII

On November 1, 1939, the Supreme Court affirmed the decision of the trial court and held the tax had been validly imposed. The court based its decision on the ground that (1) appellant, the insurer, was subject to Philippine jurisdiction; (2) the insured property was within the Philippines and subject to the protection of Philippine laws; and (3) the contract provided that certain incidents relative to adjustment of losses might be performed in the Philippines, though court did not find that the insurance companies had ever performed any acts in the Philippines or sent any agents here. (Decision, R-49-59.)

VIII

On November 16, 1939, petitioner filed a motion for reconsideration (R-59 et seq.) which was denied by the Supreme Court on December 20, 1939. (R-70) Final judgment was entered on December 23, 1940. R-70).)

REASONS FOR ALLOWANCE OF THE WRIT

Your petitioner urges the following reasons for the allowance of the writ herein prayed for:

I

This case involves determination of whether the provisions of Section 192 of the Philippine Insurance Law (Act No. 2427 as amended), insofar as they purport to impose a tax on the premiums paid by petitioner on insurance policies taken out in the United States, are contrary to the due process clause of the Constitution of the Philippines, Art. III, Sec. 1, Par. 1, which provides:

> "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

II

The decision of the Supreme Court of the Philippines decides this important point of Philippine constitutional law contrary to the decision of this Court in the case of Compañía General de Tabacos de Filipinas *vs.* Collector of Internal Revenue, 275 U. S. 87, 72 L. Ed. 177, 48 Sup. Ct. Rep. 100, wherein this Court held that Section 192, the same provision of the Philippine Insurance Law as that involved in the case, was contrary to the due process clause of the Jones Law (Sec. 3, Act of Congress of August 29, 1916) as

applied to a situation substantially identical with that before this Court in this case.

III.

The decision of the Supreme Court of the Philippines decides this important point of Philippine constitutional law contrary to the rules of law established by the decisions of this Court in the cases of Home Insurance Company et al *vs.* C. J. Dick, 281 U. S. 397-412, 50 Sup. Ct. 338, 74 L. Ed. 926; Allgeyer *vs.* State of Louisiana, 165 U. S. 78, 17 Sup. Ct. 427, 41 L. Ed. 832; Alaska Packers Association *vs.* Industrial Accounting Commission of the State of California, 294 U.S. 532-550, 48 Sup. Ct. 346, 79 L. Ed. 1044; St. Louis Cotton Compress Company *vs.* Arkansas, 260 U.S. 346, 67 L. Ed. 297, 43 Sup. Ct. 125 and by the decision of the Supreme Courts of the States of Idaho and Vermont in the cases of Hyatt *vs.* Blackwell Lumber Co., 31 Idaho 540; 173 Pac. 1083; 1 A.L.R. 1663 and Vermont *vs.* International Paper Co., 96 Vt. 506; 120 Atl. 900; 32 A.L.R. 632.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Supreme Court of the Philippines, commanding that court to certify and send to this Court for its review and determination, a full and complete transcript of the record and all proceedings in the case of Manila Electric Company *vs.* A. L. Yatco, Collector of Internal Revenue